

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
WILDERNESS VALLEY TELEPHONE COMPANY) FCC File Nos. 9901714, 9901715
)
Application and Request for Waiver to Operate)
a Microwave Path in the 6525-6875 MHz Band)

ORDER

Adopted: July 5, 2000

Released: July 6, 2000

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. We have before us a request¹ by Wilderness Valley Telephone Company (Wilderness) for a waiver of Section 101.141(a)(3) of the Commission's Rules, to permit it to install a microwave transmitter that does not meet the Commission's minimum payload capacity requirements.² For the reasons stated herein, we grant the waiver request.

II. BACKGROUND

2. Section 101.141(a)(3) of the Commission's Rules sets forth the minimum capacity and loading requirements for microwave transmitters employing digital modulation techniques and operating below 19.7 GHz that are applied for, authorized, and placed in service after June 1, 1997.³ Pursuant to Section 101.141(a)(3), for equipment using a nominal channel bandwidth of 10 MHz, the minimum payload capacity is 44.7 megabits per second (MBPS), which typically can accommodate 672 voice circuits.⁴

3. On May 12, 1999, Wilderness filed applications for authorization to operate a 10 MHz path in the 6 GHz band.⁵ It requests a waiver of Section 101.141(a)(3), because it wishes to use Avantek DR6-B (DR6-B) transmitters, which have a digital payload capacity of 40 MBPS, accommodating 576 channels.⁶ Wilderness states that because it serves very few customers in a very sparsely populated area of northern Minnesota, located within the George Washington State Forest, complying with Section 101.141 would require it to use a transmitter which provides far more capacity than Wilderness is likely to need or utilize.⁷ Wilderness also represents that it can acquire DR6-B transmitters for less than \$50,000, but a

¹ Wilderness Valley Telephone Company Request for Waiver (filed May 12, 1999) (Waiver Request).

² 47 C.F.R. § 101.141(a)(3).

³ *Id.*

⁴ *Id.*

⁵ FCC File Nos. 9901714, 9901715 (filed May 12, 1999).

⁶ Waiver Request at 1.

⁷ *Id.* Wilderness states that it serves 58 customers over a 78 square mile area.

transmitter that complies with Section 101.141 of the Commission's Rules costs three times that amount.⁸ Wilderness states that its business purpose for operating the proposed microwave link is to lessen the costs associated with its current wireline connection, and the price of a compliant transmitter would negate any projected savings.⁹ In addition, according to Wilderness, the DR6-B is better suited than compliant equipment to the rugged high-moisture environment of the area in which Wilderness operates.¹⁰ Wilderness also states that overall spectrum use in this area is extremely light.¹¹

III. DISCUSSION

4. We may grant a request for waiver when (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹² For the reasons set forth below, we conclude that a grant of the requested waiver is warranted.

5. In *Alcatel Network Systems, Inc.*,¹³ we granted a request for waiver of the rule prohibiting manufacture or import of transmitters not meeting the minimum payload requirements.¹⁴ A waiver was sought in order to provide non-compliant transmitters for use in a remote area of Alaska.¹⁵ We determined that a waiver was warranted because (i) the underlying purpose of the rules – maximizing spectrum efficiency while minimizing frequency congestion – would not be frustrated by use of non-complaint transmitters in an area with no prospects for spectrum congestion, and a waiver would be in the public interest because it would minimize the cost of providing communications services in a remote area; and (ii) Alcatel had demonstrated unique circumstances rendering application of the rule inequitable and unduly burdensome, including the remoteness of the area in which the transmitters would be deployed and the fact that the non-compliant transmitters were better suited to the harsh Alaskan environment.¹⁶

6. We find that a waiver in this case is appropriate for similar reasons. Specifically, Wilderness serves a sparsely populated and remote forested area. The microwave path is located within a wilderness area which is unlikely to become further developed and experience greater frequency demands. Because overall spectrum use in the area is extremely light, the underlying purpose of Section 101.141(a)(3), to ensure more efficient frequency use, will not be detrimentally affected by allowing this use of the non-

⁸ *Id.*

⁹ *Id.* at 3-4

¹⁰ *Id.* at 1.

¹¹ *Id.*

¹² See 47 C.F.R. § 1.925(b)(3)(i)-(ii).

¹³ *Alcatel Network Systems, Inc., Order*, 11 FCC Rcd 22407 (WTB PWD 1996) (*Alcatel*).

¹⁴ 47 C.F.R. § 101.139(f).

¹⁵ *Alcatel*, 11 FCC Rcd at 22407 ¶ 1.

¹⁶ *Id.* at 22408-09 ¶¶ 5-6. An additional circumstance was that the transmitters had been ordered before the cut-off date for manufacturing non-compliant transmitters, but not produced in time due to a supplier problem. *Id.* at 22408 ¶ 4.

compliant transmitters. As Wilderness also explains, using the compliant transmitters will be three times more costly than the non-compliant transmitters, which, in addition, are better suited for the rugged climate and terrain of northern Minnesota.¹⁷ While cost alone does not make the application of the Commission's Rules inequitable, unduly burdensome or contrary to the public interest,¹⁸ we find, in this context, when it is coupled with the unique geographic challenges posed by the climate and terrain of northern Minnesota, it constitutes a relevant factor in our determination of whether a waiver is appropriate. Finally, the requested waiver is not of great magnitude, in that Wilderness seeks to use equipment with only a slightly lower payload capacity than the rules require.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Sections 1.925 and 101.141(a)(3) of the Commission's Rules, 47 C.F.R. §§ 1.925, 101.141(a)(3), Wilderness Valley Telephone Company's Request for Waiver filed on May 12, 1999 IS GRANTED, and the associated applications, FCC File Nos. 9901714 and 9901715, WILL BE REFERRED to the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch for further processing consistent with this *Order*.

8. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

¹⁷Waiver Request at 1.

¹⁸ See, e.g., Country Cousins, Inc, *Order*, DA 99-2540, ¶ 6 (WTB PSPWD rel. Nov. 16, 1999).